

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 6th day of June, two thousand eight.

PRESENT:

HON. RALPH K. WINTER,
HON. JOSÉ A. CABRANES,
HON. BARRINGTON D. PARKER,
Circuit Judges.

ZHUHUA LI, a/k/a ZHUHUA ZI,
Petitioner,

v.

MICHAEL B. MUKASEY,
UNITED STATES ATTORNEY GENERAL,¹
Respondent.

07-3943-ag
NAC

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Acting Attorney General Paul D. Clement as the respondent in this case.

1 **FOR PETITIONER:** **Charles Christophe, Christophe &**
2 **Associates P.C., New York, New York.**

3
4 **FOR RESPONDENT:** **Jeffrey S. Bucholtz, Acting**
5 **Assistant Attorney General; Aviva L.**
6 **Poczter, Senior Litigation Counsel;**
7 **Stephen M. Elliott, Trial Attorney,**
8 **Office of Immigration Litigation,**
9 **Washington, D.C.**

10
11 UPON DUE CONSIDERATION of this petition for review of a
12 decision of the Board of Immigration Appeals ("BIA"), it is
13 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
14 review is DENIED.

15 Zhuhua Li, a native and citizen of the People's
16 Republic of China, seeks review of an August 15, 2007 order
17 of the BIA affirming the July 15, 2005 decision of
18 Immigration Judge ("IJ") Elizabeth A. Lamb, denying her
19 application for asylum, withholding of removal, and relief
20 under the Convention Against Torture ("CAT"). *In re Zhuhua*
21 *Li*, No. A98 287 515 (B.I.A. Aug. 15, 2007), *aff'g* No. A98
22 287 515 (Immig. Ct. N.Y. City Jul. 15, 2005). We assume the
23 parties' familiarity with the underlying facts and
24 procedural history of this case.

25 When the BIA adopts the decision of the IJ and
26 supplements the IJ's decision, we review the decision of the
27 IJ as supplemented by the BIA. *See Yan Chen v. Gonzales,*

1 417 F.3d 268, 271 (2d Cir. 2005). We review the agency's
2 factual findings under the substantial evidence standard,
3 treating them as "conclusive unless any reasonable
4 adjudicator would be compelled to conclude to the contrary."
5 8 U.S.C. § 1252(b)(4)(B); see, e.g., *Zhou Yun Zhang v. INS*,
6 386 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled in part on*
7 *other grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494
8 F.3d 296 (2d Cir. 2007) (en banc). However, we will vacate
9 and remand for new findings if the agency's reasoning or its
10 fact-finding process was sufficiently flawed. *Cao He Lin v.*
11 *U.S. Dep't of Justice*, 428 F.3d 395, 406 (2d Cir. 2005);
12 *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir. 2004).
13 Further, we review *de novo* questions of law and the
14 application of law to undisputed fact. See, e.g., *Secaida-*
15 *Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

16 We find no error in the agency's conclusion that Li
17 failed to provide sufficient evidence to establish her
18 eligibility for relief. As to Li's family planning claim,
19 the IJ found that "[s]he has not been persecuted in the past
20 and any future persecution is speculative," inasmuch as she
21 had not demonstrated that she was in violation of the family
22 planning policy or that she would be in the future. We have

1 held that if a petitioner claims that she faces
2 sterilization, but has only one child or no children, such
3 claim may appropriately be considered "speculative." See
4 *Jian Xing Huang v. INS*, 421 F.3d 125, 128-29 (2d Cir. 2005)
5 (holding that, absent solid support in the record for the
6 petitioner's assertion that he would be subjected to forced
7 sterilization, his fear was "speculative at best.")
8 Therefore, the IJ properly found that Li's claim was
9 "speculative" where she only had one child. *Id.*

10 With respect to Li's claim that she would be persecuted
11 on account of her illegal departure, the IJ found that Li
12 had only demonstrated that "[s]he may in fact be fined," and
13 that "fining or having to pay money because of an illegal
14 exit from one's country is not grounds for political asylum
15 here in the United States." Because Li points to no
16 evidence in the record that demonstrates that her fear of
17 persecution on account of her illegal departure from China
18 is objectively reasonable, the agency's denial of asylum and
19 withholding of removal on this ground was proper. *Id.* at
20 129.

21 With respect to Li's application for CAT relief, the IJ
22 found that "there is nothing in the record that would allow

1 [her] to believe that [Li] would be tortured as defined by
2 statue were she to be returned to [] China." Li argues that
3 the background materials "provide ample documentation of the
4 horrific conditions in Chinese prisons and detention
5 facilities, and the pervasive use of brutal and often lethal
6 methods of torture." However, we have expressly held that
7 the agency does not err in finding that a particular
8 petitioner is not "entitled to CAT protection based solely
9 on the fact that she is part of the large class of persons
10 who have illegally departed China." *Mu Xiang Lin v. U.S.*
11 *Dep't of Justice*, 432 F.3d 156, 159-60 (2d Cir. 2005). For
12 that reason, we find that the agency's denial of CAT relief
13 was also proper.

14 Finally, the BIA construed Li's "evidence reflecting
15 that she gave birth to her first child in December 2005" as
16 a motion to remand, but found that such evidence did not
17 demonstrate that her subjective fear was objectively
18 reasonable. We review the BIA's denial of a motion to
19 remand for abuse of discretion, and a motion to remand that
20 relies on newly available evidence must meet the substantive
21 requirements of a motion to reopen. See *Li Yong Cao v. U.S.*
22 *Dept. Of Justice*, 421 f.3d 149 (2d Cir. 2005). A movant's

1 failure to establish a prima facie case for the underlying
2 substantive relief sought is a proper ground on which the
3 BIA may deny a motion to reopen. See *INS v. Abudu*, 485 U.S.
4 94, 104-05 (1988). Because Li's evidence that she has one
5 child does not affect the agency's determination that her
6 claim is speculative, we find that the BIA did not abuse its
7 discretion in denying her motion. *Id.*

8 For the foregoing reasons, the petition for review is
9 DENIED. As we have completed our review, any stay of
10 removal that the Court previously granted in this petition
11 is VACATED, and any pending motion for a stay of removal in
12 this petition is DISMISSED as moot. Any pending request for
13 oral argument in this petition is DENIED in accordance with
14 Federal Rule of Appellate Procedure 34(a)(2), and Second
15 Circuit Local Rule 34(b).

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe, Clerk
18

19 By: _____